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HAROLD B. WILLEY,

In the Supreme Court of the United States

OCTOBER TERM, 1954.

No. 687

LOUIS CLIFFORD, SAM GIAIMO and JAMES THOMAS,
Petitioners,

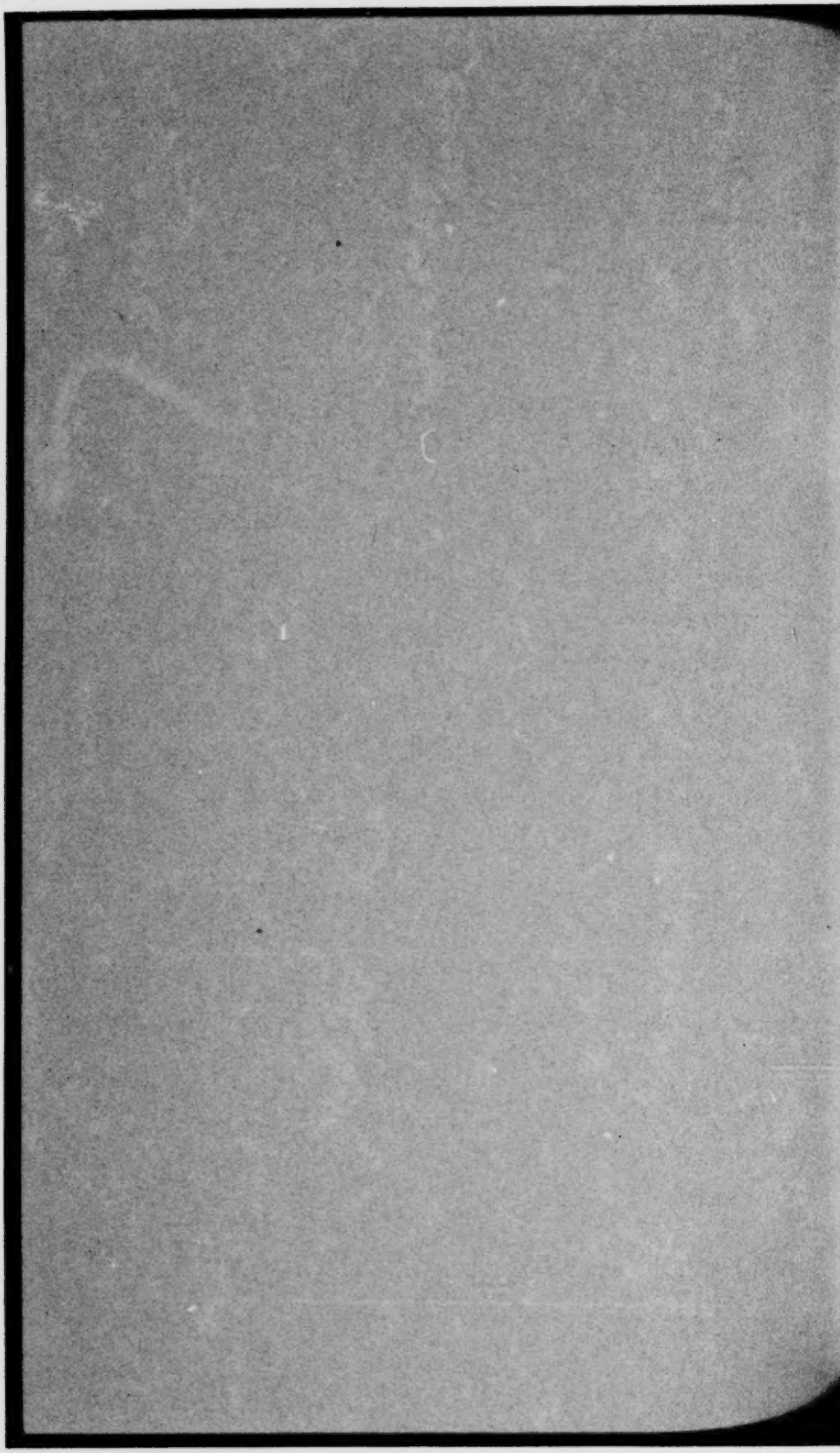
vs.

THE STATE OF OHIO,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO.

RAYMOND T. JACKSON,
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THE GATES LEGAL PUBLISHING CO., CLEVELAND, OHIO—MAIN 1-5847



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In the Supreme Court of the United States

OCTOBER TERM, 1954.

No. .....

LOUIS CLIFFORD, SAM GIAIMO and JAMES THOMAS,
Petitioners,

vs.

THE STATE OF OHIO,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF OHIO.

Petitioners severally pray that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Ohio affirming a judgment of the Court of Appeals for the Eighth District of Ohio, Cuyahoga County, which affirmed a judgment of the Court of Common Pleas for Cuyahoga County, Ohio, finding and holding each of Petioners guilty of, and sentencing each of Petitioners for, contempt of court.

OPINIONS BELOW.

The oral decision and opinion of the Court of Common Pleas is unreported and is printed in Appendix A hereto, *infra*, pp. 18-31. The opinion of the Court of Appeals for the Eighth District of Ohio, Cuyahoga County, is printed in Appendix A hereto, *infra*, pp. 31-36, and is reported in 97 Ohio App. 1, 118 N. E. (2d) 853. The opinion of the Supreme Court of the State of Ohio (R. 12-18) is printed in Appendix A hereto, *infra*, pp. 37-42, and is reported in 162 Ohio St. 370, 123 N. E. (2d) 8.

JURISDICTION.

The judgment of the Supreme Court of the State of Ohio (the highest court of the State) was entered on December 15, 1954. (R. 22, 23.) A timely application for rehearing, filed on December 29, 1954 (R. 19-20), was denied on January 5, 1955. (R. 24.) The contempt proceeding was initiated in the Court of Common Pleas of Cuyahoga County, Ohio, against Petitioners jointly by written charges and an order requiring them to show cause why they should not be punished for contempt of that court. (Printed Record below 1-2, 5.*) In the hearing upon the order to show cause in the Court of Common Pleas, the question whether the First and Fourteenth Amendments to the Constitution of the United States constituted a defense to the charge of contempt was raised by Petitioners in the opening statement of their counsel, in the closing arguments of their counsel and by a timely motion for a new trial. (Pr. R. 3, 16-7, 84-5, 87-9, 90-2.) In the Court of Appeals for the Eighth District of Ohio, Cuyahoga County, the foregoing federal question was raised by Petitioners' eleventh assignment of error on appeal. (App. A, p. 33.) In the Supreme Court of the State of Ohio, the foregoing federal question was raised by Petitioners' second assignment of error on an appeal as of right and on a motion to certify and by Petitioners' application for rehearing. (R. 1, 6, 19-20.)

The rights, privileges and immunities claimed by Petitioners under the First and Fourteenth Amendments to the Federal Constitution were denied by the State Courts. (App. A, pp. 34-35, 39-41; R. 22.)

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* The entire printed record below is designated page 11 of the Transcript of Record certified by the Clerk of the Supreme Court of Ohio. For convenience of reference, pages of the printed record below are hereinafter cited as "Pr. R. ....."

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The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3).

QUESTION PRESENTED.

A. Whether, under the circumstances stated below, convictions of employees of a newspaper for contempt of court, based upon the taking and subsequent publication of a photograph of a former local probate judge being arraigned in a state court upon an indictment charging him with embezzlement, violated the freedom of the press guaranteed by the First and Fourteenth Amendments to the Constitution of the United States:

1. For many years the reporting of criminal proceedings in the same local trial court had included the publication of photographs taken in the courtroom.

2. The bench of the same local trial court, which consisted of fifteen judges, had considered the adoption of, but had declined to adopt, a rule prohibiting taking of any picture during criminal trials or proceedings.

3. The judge presiding at the arraignment had not promulgated in writing or announced from the bench any rule prohibiting the taking of a picture during criminal proceedings but, after his recent assignment to the criminal branch of the local court, had informally told certain newspaper reporters, with whom he talked during the pendency of two earlier trials, that he would not permit the taking of a picture during those trials.

4. The presiding judge had informed two newspaper reporters present in his chambers on the afternoon preceding the arraignment that he would not

permit the taking of any picture of the former probate judge, in the courtroom or in chambers, at the time of the arraignment and that he was doing this solely because one of the two local bar associations had recently adopted the Canons of Judicial Ethics and non-compliance therewith would subject him to disciplinary action by the bar.

5. The effect and purpose of taking and publishing the photograph was to emphasize to the public the impartiality with which all persons, regardless of their position or standing in the community, are treated in the administration of justice by the local criminal court and to maintain and increase public confidence in, and public respect for, the court.

6. The picture was taken carefully and unobtrusively and in a fraction of a second with modern photographic equipment; and its taking did not in fact obstruct or interfere with the administration of justice.

7. The very brief pause, which occurred immediately before the court fixed bond, was not made necessary by the taking of the picture but, instead, resulted from the desire of the presiding judge immediately to inquire as to, and to ascertain, the identity of the person who had taken the picture.

CONSTITUTIONAL PROVISIONS INVOLVED.

The provisions of the First and Fourteenth Amendments to the Constitution of the United States, which are involved, are set out below:

> "Article [I]. Congress shall make no law * * * abridging the freedom of speech, or of the press; * * *." (U. S. C. 1952 ed., Vol. 1, p. XLIV.)

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"Article XIV, Section 1. * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; * * *." U. S. C. 1952 ed., Vol. 1, p. XLV.)

In our opinion, Sections 2323.01, 2323.22 and 2705.01 of the Ohio Revised Code are not here involved. However, since the opinion of the Ohio Supreme Court contains a general reference to those statutes (App. A, p. 42, 162 Ohio St. 370, 375), they are printed in Appendix B, *infra*, p. 43.

STATEMENT.

Petitioners, Clifford, Giaimo and Thomas, are respectively the city editor, a reporter and a photographer employed by The Cleveland Press, one of the daily newspapers published in Cleveland, Ohio. Following publication of articles in The Cleveland Press which charged that the judge of the local probate court had been guilty of certain acts of misconduct, the probate judge resigned; and on August 18 and 19, 1953, information circulated among local newspaper reporters that a grand jury, then sitting, was about to return an indictment against the former judge. (Pr. R. 17-9, 32, 43-4.)

After adjournment of court on August 19, 1953, Petitioner Giaimo and a reporter for another Cleveland newspaper were present in the chambers of Common Pleas Judge Joseph Silbert who, pursuant to information communicated to him by an assistant prosecuting attorney, was waiting to receive an indictment charging the former probate judge with embezzlement. After the indictment was handed to the judge, he received a telephone call from counsel for the former judge with respect to setting a time for the arraignment. During that telephone conversation, Judge Silbert specially set a time certain for

the arraignment, to-wit, 10 A.M. on the next day, August 20, 1953, and stated to counsel for the former judge that he would not permit any photographs to be taken in the courtroom or in chambers at the time of the arraignment. (Pr. R. 8-9, 19-20, 63-4, 71.)

At the conclusion of that telephone conversation, Judge Silbert stated to the two reporters present that counsel for the former judge had informed Judge Silbert that a plea of not guilty would be entered; that the taking of any picture in the courtroom or in chambers would not be permitted during the arraignment; that "the court was apologetic about it," but that "nobody is going to jail and nobody is going to be cited for contempt." The Court's *sole* reason for not permitting the taking of a photograph in the courtroom or in chambers during the arraignment was that, since the Cleveland Bar Association (one of the two local bar associations) had recently adopted the Canons of Judicial Ethics, he would be subject to disciplinary action by the bar if he permitted pictures to be taken. (Pr. R. 9, 14, 20, 25, 28-9.)

On the evening of August 19, Giaimo reported the substance of the foregoing by telephone to his superior, Petitioner Clifford. On the morning of August 20, Clifford assigned Petitioner Giaimo, as a reporter, and Petitioner Thomas, as a photographer, to cover the arraignment. Clifford told Thomas the background of the indictment and instructed him to obtain a picture of the former judge being arraigned and cautioned him to exercise great care to avoid causing any disturbance. No one informed Thomas of the statements which Judge Silbert had made to the reporters present in his chambers on the previous day. (Pr. R. 20-1, 33-4, 38, 40-1, 44-7, 52-5.)

Prior to the arraignment on August 20, Petitioner Thomas and a photographer for another newspaper took

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several pictures of the defendant and his attorney in the corridors and assignment room of the courthouse and seated at the trial table during a court recess which preceded the arraignment. (Pr. R. 35-6, 64-6, 73; Defs.-Resp. Exs. A-F incl., Pr. R. 108-113.)

During the court recess and just prior to Judge Silbert's return to the bench for the arraignment, Giaimo and Thomas took positions in a doorway at the front of the courtroom to one side and slightly to the rear of the bench. When the case was called, defendant and his counsel came before the bench; defendant's counsel waived the reading of the indictment and entered a plea of not guilty; and the Judge directed that the plea be recorded. (Pr. R. 22-3, 36-7.) At that point, Thomas took the picture. (Pl.-Rel. Ex. 1, Pr. R. 107.) The picture was taken in a "split second" with a camera having a shutter which worked at 1/400th of a second and with only a slight click and with a flash bulb which burned for 1/50th of a second and made no sound. (Pr. R. 25, 37.)

Thereupon Judge Silbert, before fixing bond, paused to inquire who had taken the picture and, when Thomas replied that he had done so, instructed Thomas to remain. The Judge then fixed bond, which terminated the arraignment; and defendant and his counsel left the courtroom. The Judge then interrogated Petitioners Giaimo and Thomas and was informed that both were employed by The Cleveland Press and were acting under the instructions of their superior. (Pr. R. 10, 23-4, 30, 38.) The Judge then immediately retired to his chambers, telephoned the editor of The Cleveland Press (who knew nothing of the foregoing events) and informed him that nothing would be done if the picture was not published. (Pr. R. 60-1.) The picture was published in the Home Edition of The Cleveland Press for August 20, 1953.

For many years the reporting of criminal trials in the State courts by Cleveland newspapers had included the publication of photographs taken in the courtroom. (Pr. R. 14-6, 32-3, 39.) Canon 35 of the Canons of Judicial Ethics, which the American Bar Association had adopted on September 30, 1937, was adopted by the Cleveland Bar Association on October 13, 1952, but had never been adopted by the Cuyahoga County Bar Association. (Pr. R. 14-5.) The bench of the local common pleas court, which consists of fifteen judges, thereafter considered the adoption of, but declined to adopt, a rule prohibiting the taking of any picture during criminal trials or proceedings. (Pr. R. 11-2.)

Judge Silbert's then assignment to the criminal branch of the Common Pleas Court had begun on May 4, 1953. The foregoing action of the Cleveland Bar Association came to Judge Silbert's attention "some time after the first of the year" (1953). Thereafter Judge Silbert had informally told certain newspaper reporters or photographers, with whom he had talked during the pendency of two criminal trials, that he would not permit the taking of any picture in the courtroom during those trials. However, Judge Silbert had not promulgated in writing, or formally announced from the bench, any rule with respect to taking a picture during a criminal trial or proceeding. (Pr. R. 10-2, 14, 67-8, 70, 72.)

On August 27, 1953, Judge Silbert issued an order directing the Assistant Prosecuting Attorney of Cuyahoga County, Ohio, to prepare and prefer written charges of contempt of court against the Petitioners. (Pr. R. 4-5.) On the same date, written charges (based upon the taking and publishing of the foregoing photograph) were filed and Judge Silbert entered an order directing the Petitioners to show cause why they should not be punished for con-

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tempt of court. (Pr. R. 1-2, 5.) At the hearing held on the charges on September 9, 1953 in the Court of Common Pleas, Petitioners claimed and asserted the rights, privileges and immunities guaranteed by the First and Fourteenth Amendments to the Federal Constitution as a defense to the charge of contempt through the opening statement and closing arguments of their counsel and by a timely motion for a new trial. (Pr. R. 3, 16-7, 84-5, 87-9, 90-2.) In the Court of Appeals for the Eighth District of Ohio, the foregoing federal question was again raised by Petitioners' eleventh assignment of error on appeal. (App. A, p. 33.) In the Ohio Supreme Court the foregoing federal question was again raised by Petitioners' notice of appeal, their second assignment of error on an appeal as of right and on a motion to certify and by a timely application for rehearing. (R. 1, 6, 19-20.)

The rights, privileges and immunities claimed by Petitioners under the First and Fourteenth Amendments to the Federal Constitution were denied by the state courts. (App. A, pp. 34-35, 39-41.)

Execution of the sentence imposed upon each of the Petitioners for contempt of court was stayed on bond pending the appeals in the state courts and by the Ohio Supreme Court pending final disposition of the case by this Court. (R. 21-23; Certificate of Clerk of Supreme Court of Ohio.) The final judgment of the Ohio Supreme Court (R. 23) is printed in Appendix C hereto, *infra*, p. 44.

REASONS FOR GRANTING THE WRIT.

1. The First and Fourteenth Amendments to the Federal Constitution prohibit not only previous censorship of publications but also *any form* of prior restraint upon publications or their circulation. *Grosjean v. American Pub-*

lishing Co., 297 U. S. 233, 248-51; *Near v. Minnesota*, 283 U. S. 697, 713-7. Manifestly, the use of contempt proceedings to restrain newspapers from obtaining or publishing news of a criminal trial, is a form of prior restraint upon freedom of the press which is fully as effective as an express statutory or judicial prohibition against the publication of news of criminal trials or of other public acts of governmental officers.

In *Craig v. Harney*, 331 U. S. 367, this Court said:

> "We start with the news articles. A trial is a public event. What transpires in the court room is public property. If a transcript of the court proceedings had been published, we suppose none would claim that the judge could punish the publisher for contempt. And we can see no difference though the conduct of the attorneys, of the jury, or even of the judge himself, may have reflected on the court. Those who see and hear what transpired can report it with impunity. There is no special perquisite of the judiciary which enables it, as distinguished from other institutions of democratic government, to suppress, edit, or censor events which transpire in proceedings before it." (l.c. 374.)

This Court has held that the constantly-increasing complexity of government with the attendant multiplication of opportunities for malfeasance, corruption and official neglect "emphasizes the primary need of a vigilant and courageous press, especially in great cities." *Near v. Minnesota*, 283 U. S. 697, 719-20.

2. The communication of ideas by picture, equally with the printed word, is included within the rights of free speech and free press guaranteed by the First and Fourteenth Amendments. *Burstyn, Inc. v. Wilson*, 343 U. S. 495, 501-2; *Superior Films, Inc. v. Ohio*, 346 U. S. 587, 589.

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3. This Court has determined that the power of a State or its courts to punish for alleged contempts of court, is limited by the guaranties of the First and Fourteenth Amendments. This Court has settled that the power of State courts to punish for alleged contempts can be exercised to abridge or limit the rights of free speech and of free press only when, if, and to the extent that, the exercise of such power is necessary to meet a clear, present and highly imminent danger to the administration of justice and that the unqualified prohibitions of the First Amendment "were intended to give to liberty of the press, as to other liberties, the broadest scope that could be countenanced in an orderly society." *Bridges v. California,* 314 U. S. 252, 263, 265; *Pennekamp v. Florida,* 328 U. S. 331; *Craig v. Harney,* 331 U. S. 367. In the foregoing decisions, this Court emphasized that the objective of the constitutional guarantee of a free press cannot be attained unless that freedom can be exercised during the pendency of, and while public interest is focused upon, an event.

4. Whether an alleged contempt occurs within or outside the courtroom may be relevant upon an issue with respect to whether a particular act did *in fact* substantially interfere with, or constitute a "clear and present danger" to, the administration of justice. Whether an act allegedly constituting contempt occurs in the presence of the court may also determine whether summary punishment for contempt without giving notice, granting a hearing or taking evidence, constitutes due process of law. However, nothing in the decisions of this Court or in constitutional principle suggests that the power of a state court to abridge or limit freedom of speech and of the press is any greater because the allegedly contemptuous act occurred in the presence of the court. Specifically, nothing in the decisions of this Court warrants a conclusion

that the contempt power may be exercised to abridge those freedoms, even though the allegedly contemptuous act occurred in the presence of the court, where such act did not in any way obstruct, or constitute a "clear and present danger" to, the administration of justice.

5. Manifestly, the accuracy of no means or form of reporting the arraignment could exceed, or even equal, that of taking and publishing the picture. The resignation and indictment of the former probate judge had resulted from disclosures made by The Cleveland Press. There is no higher public interest in the maintenance of a free press than that the press shall be free to keep the people informed with respect to the administration of justice in their courts. In the instant cast, the effect and purpose of taking and publishing the picture were not to impair the dignity of the court or to bring it into public disrespect or disrepute. Instead, the effect and purpose were to emphasize to the public that in the Common Pleas Court of Cuyahoga County any one charged with a criminal offense, no matter how high the official or other position which he then held or previously had held, was treated precisely the same as the most humble citizen and thereby to sustain and increase public confidence in, and public respect for, the local courts and the administration of justice in those courts. No written description could serve that purpose and objective as well as a photograph.

6. The only alleged interference with the administration of justice in this case is that a brief pause—less than a minute—occurred during the arraignment. Even this brief pause was not made necessary or caused by any act of Petitioners but, instead, by the desire of Judge Silbert immediately to inquire as to, and immediately to ascertain, the identity of the person who had taken the picture. The

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defendant's attorney was unable to recall at what point during the arraignment the picture had been taken because the incident did not divert his mind from the matter which he was handling before the court (Pr. R. 66). Manifestly, any sound was less than that customarily incident to spectators entering and leaving a courtroom. (*Supra*, p. 7.)

The fair inference from the evidence is that this pause was not made necessary or caused by the allegedly contemptuous act of Petitioners but by the court's understandable but unjustified pique occasioned by his belief that some one had disregarded his informal statements to the two reporters who had been present in his chambers on the previous afternoon.

The arraignment proceeding involved neither jurors nor witnesses. The taking and publication of the photograph did not, we submit, cause any substantive or substantial interference with, or create any "clear or present danger" to, the administration of justice. The State courts did not find to the contrary; but, had they done so, their finding would not have been controlling in this Court on the questions of federal constitutional right presented in this case.

Doubtless pictures could be taken to such an extent or in such a way or with such antiquated equipment or under such circumstances as to interfere with the administration of justice. But none of those hypothetical situations is present in the instant case. Nevertheless, the decision of the Ohio Supreme Court rests, at least in part, upon a hypothetical assumption (wholly unrelated to the facts of this case) that pictures might be taken to such an extent, with such equipment, under such circumstances or in such a way as to interfere with the administration of justice. (App. A, 41; 162 Ohio St. 370, 374.)

7. For many years the reporting of criminal trials and proceedings in the local common pleas court (including the branch thereof presided over by Judge Silbert) by Cleveland newspapers had included the publication of photographs taken in the courtroom. After the adoption of Canon 35 of the Canons of Judicial Ethics by one of the local bar associations on October 13, 1952, the fifteen judges of the Court of Common Pleas for Cuyahoga County considered, but declined to adopt, a rule prohibiting the taking of pictures in the rooms of that court. If the taking of a picture, particularly under circumstances such as those present in the instant case, substantially or at all interfered with the administration of justice, it is incredible that the judges of that court would not have adopted such a rule or that Judge Silbert, who had been on the bench for eighteen years, would not have adopted such a rule long prior to the forepart of 1953, when he heard of the recent action of one of the two local bar associations.

8. The contempt charged in the written citation included the taking and publishing of the picture. At the hearing, Judge Silbert ruled that the taking and publishing of the picture constituted "one continued act of contempt." (Pr. R. 8, 59.) Immediately after the conclusion of the arraignment, Judge Silbert requested the editor of The Press not to publish the picture and stated that if the picture were not published, "the situation could be satisfactorily concluded." (Pr. R. 60.) Plainly, the contempt power was utilized directly to censor the publication of news.

9. Notwithstanding the holding of this Court, that neither an "inherent tendency" nor a "reasonable tendency" to interfere with the orderly administration of justice, will justify an abridgment of the constitutional free-

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doms of speech and the press (*Bridges v. California*, 314 U. S. 252, 273), the Ohio Supreme Court held that a mere "potential possibility" of causing "a distraction" is sufficient to empower the Ohio courts to abridge those freedoms. (App. A, p. 36; 162 Ohio St. 370, 374.)

10. Citing *United States v. United Mine Workers*, 330 U. S. 258, and *Gompers v. Buck's Stove & R. Co.*, 221 U. S. 418, Respondent contended below that the federal constitutional rights claimed by Petitioners could not be asserted as a defense to the contempt charge because violation of a void order is nevertheless contempt. Judge Silbert held that Petitioner Thomas had not violated, but that Petitioners Giaimo and Clifford had violated, an "express order" of the court (i.e. his informal statements in chambers to two reporters on the evening before the arraignment). (App. A, pp. 23-24, 29-31.) Respondent's contention was plainly inapplicable to Petitioner Thomas, was not in accord with Ohio law and was not a ground of the decision of the Ohio Supreme Court.

Under Ohio law the simple violation of an order, which unconstitutionally abridges the freedom of the press, does not constitute a contempt of court. *State v. Morrow*, 57 O. App. 30, motion to certify overruled 57 O. App. XXXVI. The Ohio Supreme Court did not affirm the conviction of any of Petitioners upon the ground that the federal constitutional rights claimed by him were not, or under state practice could not be, properly interposed as a defense to the contempt charge. Instead, that court held that the federal constitutional rights claimed by Petitioners were not, as a matter of federal constitutional law, broad enough to constitute a good defense. (App. A, pp. 39-41; 162 Ohio St. 370, 373-4.)

Moreover, the informal statements of the trial judge in chambers were made late in the afternoon preceding the

arraignment which he had set for 10:00 a.m. on the next day. Assuming that a remedy in a higher court for testing the validity of such an alleged order was technically available to Petitioners, the federal constitutional rights claimed by them would have been lost before any relief could have been obtained; and to hold that such an illusory remedy barred Petitioners from asserting their federal constitutional rights, would have been to make an alleged state practice a vehicle for nullifying those rights. Federal constitutional rights cannot be nullified by such means in the State courts. *Ward v. Love County*, 253 U. S. 17, 22; *Postal Telegraph Cable Co. v. Newport*, 247 U. S. 464, 475-6; *Davis v. Wechsler*, 263 U. S. 22, 24; *Young v. Ragen*, 337 U. S. 235, 238; *Enterprise Irrigation Dist. v. Farmers Mutual Canal Co.*, 243 U. S. 157, 164.

Furthermore, the Ohio Supreme Court's dubious holding, that the trial judge's informal statements made to two newspaper reporters in chambers, constituted an "express order" of the court, would have been subject to independent review by this Court, had the Ohio Supreme Court denied the federal constitutional rights claimed by Petitioners upon that ground and would have raised a question of due process of law under the Fourteenth Amendment.

11. The decision of the Ohio Supreme Court is, we submit, in conflict with the decisions of this Court hereinbefore cited. If that decision does not conflict with those decisions of this Court, then it clearly raises a question with respect to the application of the First and Fourteenth Amendments to the Federal Constitution to the power of state courts to punish for contempt, which has not been settled by this Court. In either view, the great and nationwide importance of the question is, we believe, patent.

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CONCLUSION.

For the foregoing reasons, this petition for a writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX A.

DECISION OF THE COURT OF COMMON PLEAS.

(September 9, 1953.)

SILBERT, JOSEPH H., *J.*: I think the only simple question in this entire case is the one whether the Court made an order, whether the order was reasonable and whether it was violated by the respondents.

In the contempt citation the three respondents are charged with directing and taking this photograph contrary to and in disobedience of the express order made by the Court which thereby transgressed the dignity and honor of the Court and obstructed the orderly administration of justice.

Mr. Edwards asked, did it obstruct the orderly administration of justice? Well, it did. I was in the midst of the arraignment proceedings, court was open and it was because of the disturbance to my rear that the proceedings were interrupted.

If this camera—I am not familiar with cameras—was as noiseless as the respondent Thomas says, or Mr. Edwards contended, it would not have disturbed the Court as it did. The proceedings were interrupted and they were interrupted for a few minutes, until the Court ascertained the cause of the interruption.

There was a deliberate violation of a Court order. Was it reasonable? Well, I have a Canon of Ethics which I believe very highly I am bound by, at least in my own mind I am bound by it.

When my attention was called to the fact that the Canon of Ethics or Rules of Conduct, Judicial Rules of Conduct, were adopted by the Cleveland Bar Association unanimously—frankly, I didn't read it very carefully and I wasn't interested in seeing whether the t's were crossed

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or the i's were dotted—it was enough for this Court that these Canons were adopted and the substance provided for the fact that no pictures were to be taken. I upheld that rule as soon as I learned about it, and I made no exception in any case.

So the respondent Clifford, City Editor of the Cleveland Press, decides in his own mind that the order wasn't a lawful one and he is going to disobey it and disregard it, and he instructs respondent Giaimo to go down to court with respondent Thomas to take this picture.

Did Giaimo know that a picture was going to be taken in defiance of an express order given to him? He told me so in open court when I asked him why he did it. He didn't say, "Judge, I had nothing to do with it. I didn't know a picture was going to be taken." He said it was ordered by my boss.

Is the respondent Thomas guilty of anything? He is guilty of disturbing the Court, creating a disturbance in the court, because it did create a disturbance. I interrupted the arraignment proceedings. It doesn't matter whether there were one hundred people in the courtroom or ten or twelve. I couldn't tell you how many were in the courtroom. I wasn't interested in that. I didn't dream at the time it would become an issue later. I am certain the courtroom wasn't crowded, and I am certain there weren't many people in the courtroom.

So the photographer does something which, in my experience of 18 years on the bench has not been done. He takes a picture without asking the Court whether it is all right.

Heretofore photographers or reporters have asked this Court. Giaimo has asked, "Can we take a picture?" I would set out the conditions under which a picture could be taken, and until the adoption of the Canon of Ethics,

in a desire and in recognition of the fact that these boys have to make a living and in recognition of the fact that maybe it will be a feather in their cap if they do take a picture, where there were no objections the Court permitted it.

The Court permitted it in May, 1952, during the proceedings that we had in the Civil Branch in the land forfeiture cases. The Court permitted pictures to be taken in the Birns trial when Birns was arraigned in 1950. The Court does not deny that.

But the Court has challenged anyone to say that to my knowledge pictures were taken since the time this Court has learned of the adoption of the Canon of Ethics by the Cleveland Bar Association which, in my mind, at that time and at this moment binds this Court.

If we are going to expect lawyers to live up to the Canon of Ethics why should not Judges set an example by living up to it? And the fact that some Judges do not live up to the Canon of Ethics, am I my brother's keeper? Am I responsible for the other Judges? What can this Court do about it?

I have tried, and every newspaper reporter of all three papers will testify to it, I have tried to the best of my ability to live up to the highest standards of judicial ethics.

All the three Editors know this Court. Mr. Seltzer, for whom I have a personal high regard and a personal affection, I am sure if he was asked to testify as to this Court's reputation and character would not say some of the things the newspapers have said or the Press has said in the past that I discriminated, that I singled out the Brewer case and made things different. Reporters of all three papers, including James Vail of the Press, none of whom were talked to by Mr. Mahon before they were put

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on the stand as we didn't want to suggest anything, testified and we wanted them to tell the truth.

In the Svet case tried on May 20th, trial concluded on May 28th, a sanitary policeman charged with statutory rape, he wasn't a Judge. I had no interest in him other than the fact that I was going to comply with the rule of conduct which was set out for me, which is not binding upon the newspapers or the public—I make no such contention—but in my judgment is a rule of conduct laid down for the Courts and is binding on me, and, therefore, that was the basis of a change of policy on the part of this Court.

In every instance, just as Mr. Giaimo testified, Mr. Vail testified and Mr. Flannagan or Watzman, I was apologetic about it because I know most of these boys are young boys. I knew respondent Giaimo when he first started. I remember when he was a prisoner in Germany. I have nothing but affection for him. He wouldn't think of being in contempt of this Court, but the fact that his boss ordered him to do it is no less contemptuous than if he did it on his own as a matter of law.

I am speaking at length because this is the first time since the occurrence happened on August 20th that this Court has had an opportunity to give its side of it, to say something in its behalf.

I have read the headlines and I have got them here: "Equal Justice." Sure equal justice. This Court would be the last one knowingly to do anything other than to give equal justice to everyone.

"Dictatorial-Autocratic." Who is there in this community who knows this Court that would say that? Would Mr. Edwards say to the Court at any time—dictatorial, autocratic; or would Mr. Joe Hostetler or Bill Marsteller say that of me?

Yet the people who have read the newspaper would say that this Court, drunk with power, having some feeling of kinship for ex-Judge Brewer, put into effect an order which was unusual, which was different.

Let us see how much of a break this Court gave to Judge Brewer the morning of the arraignment. This is something the respondents don't know.

Mr. Harvey Weitzel, who is the deputy sheriff in charge of the Criminal Branch, came to me and said, "Judge Silbert, I have a problem. You are the presiding Judge of the court. Those who are familiar with criminal procedure know that if the presiding Judge makes an order everyone from the Sheriff to the County Prosecutor will follow it." He said, "I have a problem."

"What is your problem?"

He said, "You know Judge Brewer is going to be arraigned in a few minutes. How about fingerprinting? What shall we do about fingerprinting?"

I said, "That is no problem. What do you generally do?"

He said, "We fingerprint every defendant."

I said, "By all means fingerprint him. He is no different from anyone else."

It was at my order that ex-Judge Brewer was ordered to be fingerprinted. If I had any idea at all of being considerate of him in the slightest degree I should think the lesser of the two acts would be the taking of the picture and giving an order that he should not be fingerprinted.

I don't know whether it would have been discovered whether he was fingerprinted or not. I knew he was no different from any other defendant. I didn't put into effect the order requiring the fingerprinting, and I wasn't going to make an exception in his case.

I do feel just as strongly as your Press editorial feels about equal justice. I felt this case wasn't different. I

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felt ex-Judge Brewer was entitled to a fair trial, to the same protection that the Court has afforded every other defendant, even including Patrolman Neal. Neal was tried and after a conviction a request was made for pictures to be taken and the Court refused. Did this Court feel kindly towards Officer Neal? The Court, after the conviction, would not permit him to be out on bond during the pendency of a motion for a new trial, which is something unusual, because all Common Pleas Courts permit a defendant to be out on bail until the motion for a new trial is set.

I felt so strongly about the defendant's guilt and I was so contemptuous of him that I would not afford him that courtesy, and I said I would let him out on bond after the ruling of the motion for a new trial because if I did not the Court of Appeals would, but I would increase his bond, which I did.

In that case back in June, not in August, the *Svet* case in May, the *Neal Burmeister* case in June, I had in effect the same order that no pictures were to be taken.

These defendants, these respondents, each and every one of them the Court at this time finds guilty of the charges contained in the citation.

They are not being found guilty because the Court has spent sleepless nights, which I have. The Court has aggravated itself to death and his family and close friends, which is something the Court doesn't to this minute know why.

What did the Court do in the Brewer case that the Court didn't do in every other case? That is not why these defendants are found guilty. There is aggravation and grief in every profession. I am not finding them guilty for any personal aggravation the Court may have had.

I am finding them guilty of the charges contained in the citation: Respondents Giaimo and Clifford for vio-

lating the express order of the Court and also for disturbing the Court, and respondent Thomas for disturbing the Court.

My own idea is that he knew about the order of the Court; otherwise, why the conversation between Giaimo and Thomas that if anything happened, if there is any trouble, you let me handle it.

There is no question but what he disturbed the Court and obstructed the administration of justice. There is no question but what the proceedings were stopped just as Mr. Towell testified, and after this conversation with Mr. Thomas and Mr. Giaimo the Court then continued with the arraignment, and at the conclusion of the arraignment the Court called in Mr. Giaimo and Mr. Thomas.

The Court finds respondents Clifford, Giaimo and Thomas guilty of contempt of this Court.

Before the Court imposes sentence—I am speaking at length—if you will bear with me if I use a personal note it is because it is the first time I had an opportunity to have my say in court.

There is much made about freedom of the press. Freedom of the press has its limitations, and I am not lecturing anyone. I am giving the Court's thinking.

With power comes responsibility. Just because this Court is presiding as a court does not mean this Court should act arbitrarily, that this Court should become an autocrat and a dictator. I think power should make men humble. If a person was not humble before he assumes power, once he assumes power I don't know of a better way of showing thankfulness to the good Lord by putting you in the position you are in by having the power because that person received it by the grace of God.

I am not sitting on this bench because I am smarter than other lawyers or more deserving. The good Lord, in His wisdom, saw fit to make it possible for me to sit on

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this bench and I am happy doing what I am doing. I cannot do that at the expense of stultifying myself, at the expense of having people laugh in the Court's face or thumbing noses at the Court.

The job isn't worth it, and in my judgment the Court deserves to aggravate himself to death. For doing what? For doing the wrong thing, for making a situation, for discriminating? No. But for doing that which the Court has done from the 4th of May in this community and from the 1st of January, when I first learned about the Canon of Ethics.

This Court has been fortunate, and I say proud of it, that every time this Court has run for re-election or when this Court was a candidate in 1948 for election to this Court, I have had the approval, the favorable approval of all the three daily newspapers.

Your Editor, and I assume the City Editor, too, and those in authority at the Press, were kind enough to say nice things about the Court. All the newspapers approved of my conduct, and the Bar Association has upon every occasion, and when I was a candidate for election in 1948.

I have tried to live up to the standards that the newspapers, the civic groups and the Bar Association had from time to time defended, and for that I find myself being ridiculed by the paper and I find I am not giving equal justice to everyone. I find I am a dictator and that I suddenly crawled in bed with Judge Brewer.

To my knowledge, I have never so much as shaken hands with Judge Brewer at any time he has been on the bench. He is a Judge of another court. He was the Judge of the Probate Court. The only time I would meet Judge Brewer would be at the elevator or occasionally in the barber shop. I don't think I ever talked ten words with him. Why would I want to differentiate this case with any other?

Some of these things I am saying to get off my chest because I haven't had an opportunity to. It has nothing to do with the finding of the Court. I want to say these things before I impose sentence.

If the Court was going to show any consideration to Judge Brewer this Court could have charged the Grand Jury to adjourn court in July as is customary. In fact, the court attache and the Prosecutor's office urged the Court to adjourn court in July so that my figure would show more favorably because the prisoners waiting in jail would add up to the number of cases considered. I didn't do that.

I have no interest in it one way or the other. I knew Brewer's case was coming up before the Grand Jury. Ex-Judge Brewer was treated the same as any other defendant was treated by this Court.

No person would be in their right mind in wanting to get into an argument with a newspaper, let alone an elected public official. But, on the other hand, the Judges must have the courage of their convictions. Judges must at times arise when called upon. I would have tried to avoid any situation like this, but if it is thrown in my lap where I have no alternative a Judge must have courage to arise to the occasion.

I wasn't happy about citing the respondents. I wouldn't be happy about citing anyone who was connected with a little group, let alone one of our daily newspapers and one of the three very important and very effective newspapers.

This was a direct challenge, and the alternative to incitation was for the Court to lose its usefulness on the bench. I could no longer command the respect of any lawyer or court attache or anyone with whom the Court may have court business, if the Court did not meet this open challenge of open defiance of a court order.

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I don't claim I am a hero in doing what I did. I am unhappy about this situation but have arisen to face it.

I remember a case not so long ago, the John Lewis case, when John Lewis said that the order of the Court was invalid and illegal and defied the order of the Court. Judge Goldsboro convicted him of contempt and it went to the Supreme Court of the United States. The Supreme Court said it wasn't for John Lewis to say whether the order was legal or illegal. He had his right of appeal.

You have a principle involved here. I recognize that. You have a job to do. You are trying to take pictures. You feel by reason of the Canon of Ethics that are adopted by the Bar that your job becomes difficult, maybe impossible.

I recognize that and I am sympathetic with you, but I say to you that there is a right and wrong way of meeting that. If it is an invasion of freedom of the press, if you have a right to take pictures as you contend—and I am not passing on that, I don't have too strong feelings about picture taking where there is consent by the accused—but if you had filed a writ of prohibition to test out that question that would have been done in an orderly manner.

But just to come in and force your way into the courtroom without any notice to the Court and take the picture in open defiance of the Court, well, if that is permitted we would have chaos in our courts. We wouldn't have orderly procedure in court, and everything that our boys have been fighting for and those things that were held sacred and dear are meaningless.

No one could have quarreled with the Press or News or Plain Dealer if they would have come in May and filed a writ of prohibition. I would have helped them perfect a record. But not in the manner in which you have done it.

I have spoken at length. I didn't mean to belabor the issue. I thought of these pictures having been taken and

none of them were taken in my courtroom while the Court was in session subsequent to October 13, 1952.

I thought I ought to take this opportunity to speak. I don't want to make headlines. It won't make the same headlines that the other stories have.

For my own self-respect I have gone up to Mr. Seltzer's office already when I was a Police Judge, where I thought an injustice was done to me, and I told Mr. Seltzer my side of it and I didn't expect any corrections.

But I want you to know I haven't suddenly lost my head. I am no different than I have been.

What I have said I have said not because it is going to make headlines but because I want the people to know that this Court believes in equal justice as strongly as one can believe, believes in the administration of justice, believes that all laws are for all the people, weak, powerful, rich and poor, and as long as this Court is worthy of being a Judge on this bench I hope the people will think I am worthy of being a judge on this bench.

I am going to try to live up to the ethics of this Bar Association of ours, and if there is a dispute between the newspaper, the publishers and the Bar Association, whether it is the American Bar Association or the Cleveland Bar Association or the State Bar Association, I think those things can be handled in an orderly manner, but they are not handled by taking the law into your own hands.

As late as today's paper The Cleveland Press carries the story that this was the first time this Canon of Ethics was brought into use or play. I haven't talked to Judge Merrick since this happened and he has not talked to me. But on March 7, 1953, in the case of the State of Ohio versus William J. Frawley, 623,654, Marvin Green was sentenced to one hour in jail for contempt in the presence of the Court. He was a photographer for the Plain Dealer,

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who took a picture. Judge Merrick had expressed that no picture be taken. Subsequently Green came in open court and apologized and he was released.

I didn't exactly set a precedence. I might say that at the time I came here on May 4th I knew of Judge Merrick's action. I had read it in the newspapers. It just verified my determination of not permitting any pictures to be taken because Judge Merrick was my predecessor here as presiding Judge.

The Court has no desire to be unduly severe. The Court wants to do justice. The Court wants to do justice under the circumstances and under the situation in the case.

I have said at a time when I was in Traffic Court that a fine in one case would be justice and in another case it wouldn't be justice because the money wouldn't mean anything; that a suspension of the license would be more effective.

I tried to weigh the situation at the time, the particular type of case, the defendant, the act that is committed and tried to the best of my ability—we are only mortals and we make mistakes but we try not to—to have the penalty fit the offense.

I am going to pronounce sentence as to each defendant.

As to the defendant Thomas, as a matter of law, I cannot say that he deliberately violated the order of the Court. I think he did, but we don't convict people on thinking. But he is guilty of disturbing the Court, of having this picture taken without any notice or authority from the Court, causing the proceedings to be disturbed. However, he may not have known of the order of the Court and he may have relied upon the custom that he testified to about having taken all these many pictures in previous years.

The Court will fine him $100 and will suspend the entire sentence in his case, because I think he is an innocent victim of circumstances, except that he is guilty of the offense.

As to the defendant Giaimo, while I am sympathetic with him, he acted under order and direction of the Court. Probably if I was in Giaimo's place I would do the same thing. He either has to comply with it or quit his job. Nevertheless, as a matter of law, that is no defense. He did violate the order of the Court.

As to respondent Giaimo the Court will fine him $100 and costs.

As to the defendant Clifford, we have an entirely different situation. We have a situation here of an open defiance not only on the part of respondent Clifford but also directing the others to commit the contemptuous act. I believe that respondent Clifford probably thought in his own mind he was doing the right thing. I want to be fair. I can't conceive of anyone just knowing that he is doing the wrong thing brazenly doing it. I think in his own mind he thought the order was of no legal effect.

But in my judgment it is not for respondent Clifford to determine whether the order was right or wrong, and if he wasn't satisfied with the order he had a recourse.

He would have lost that picture but, on the other hand, The Cleveland Press knew in May no pictures were permitted in my room and they knew it in June. They could have easily gone into court and secured the writ and gotten it advanced for hearing.

The Court cannot look upon the acts of the City Editor in the same light as it did as to respondents Giaimo and Thomas. I think this was a deliberate violation of a Court order acting under the assumption that the order wasn't a valid one. But that is not the right given to lawyers and

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to lay people to determine in their own minds that they don't have to abide by an order of the Court. If that were so we would have confusion and chaos of justice.

I am going to assess a fine of $500 and costs and order the defendant to the custody of the Sheriff for one hour.

OPINION OF THE COURT OF APPEALS OF THE EIGHTH DISTRICT OF OHIO, CUYAHOGA COUNTY (APRIL 14, 1954).

SKEEL, *J.*:

This appeal comes to this court on questions of law from a judgment of guilty of contempt of court entered upon trial in the Common Pleas Court. The facts are not in dispute.

On August 19, 1953, the defendant, Sam Giaimo, a reporter for the Cleveland Press, was in the chambers of Common Pleas Court Judge Joseph H. Silbert, awaiting the return of an indictment against Nelson J. Brewer for embezzlement. Brewer had some time prior to that date resigned as Judge of the Probate Court of Cuyahoga County. Judge Silbert told Mr. Giaimo that an indictment had been returned and that Judge Brewer would be arraigned at 10 A.M. on August 20, 1953, and directly told Mr. Giaimo in the presence of another reporter that he would not permit the taking of photographs in the court room or chambers of the court at the time of the arraignment. That such order was in conformity with Canon No. 35 of the Canons of Judicial Ethics of the American Bar Association. In direct defiance of the court's order against picture taking, while the court was in session, upon the arraignment of Judge Brewer on Aug. 20, 1953 at 10 A.M., the defendants in carrying out their respective parts in the acts of contempt of court charged against them (the defendant, Clifford, directing that the picture

should be taken after knowledge of the court's order; defendant Giaimo assisting in taking the picture and defendant, Thomas, acting as camera-man) took a picture of the court proceedings of the arraignment and delivered the plate to the Cleveland Press for publication.

From a judgment of guilty of contempt of court as to each of the defendants, they claim the following errors:

"1. The finding of guilty against defendants-respondents-appellants and each of them, is not sustained by sufficient evidence and is contrary to law.

2. In finding the defendants-respondents-appellants and each of them had been guilty of contempt of court.

3. In finding that defendants-respondents-appellants and each of them had been guilty of misbehavior in the presence of, or so near the court or judge, as to obstruct the administration of justice.

4. In finding that the acts of defendants-respondents-appellants and each of them, obstructed the administration of justice in the case of the State of Ohio against Nelson J. Brewer, being case No. 63332 on the docket of said court.

5. In holding that the publication of the photograph of the arraignment of Nelson J. Brewer in connection with the aforesaid case was a contempt of court.

6. In finding that the defendants-respondents-appellants and each of them had been guilty of contempt of court in that they disobeyed an express order of the court.

7. In taking judicial notice of matters not properly within the knowledge of said court.

8. In taking judicial notice of and admitting in evidence matters which were not competent, relevant or germane in connection with the charges preferred against defendants-appellants and each of them.

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9. In excluding evidence offered by defendants-respondents-appellants which was competent, relevant or germane in connection with said charges.

10. In finding the defendants-respondents-appellants and each of them guilty of contempt of court in violation of the provisions of Section 11, Article I of the Constitution of the State of Ohio.

11. In finding the defendants-respondents-appellants and each of them guilty of contempt of court in violation of the provisions of the first through the fourteenth amendment of the Constitution of the United States.

12. In basing the findings and judgment of guilty of contempt of court on a Canon of Judicial Ethics.

13. In failing to request the assignment of another judge of the Court of Common Pleas of Cuyahoga County to hold the hearing on the written charges filed against the defendants-respondents-appellants.

14. The findings and judgment of the court are contrary to the law and the evidence.

15. In committing the several errors of law occurring at the trial to which exceptions were taken by the defendants-respondents-appellants at the time.

16. Other errors manifest from the face of the record."

It is first claimed by the defendants that the order was not properly issued, not having been journalized, the claim being made that a court speaks only through its journal. Such rule has application to the judgments or orders of the court when dealing with the trial of cases filed and invoking the court's jurisdiction. A judge is at all times during the sessions of the court, empowered to maintain decorum and enforce reasonable rules to insure the orderly and judicious disposition of the court's business. An order made directly to one in attendance of a

judicial proceeding, that certain conduct would not be permitted while the court was in session, need not be journalized to give such order legal effect, particularly with regard to those who are so directed and act with full knowledge and in defiance of the order.

The judge in enforcing orders directing proper and necessary decorum in the court room, while the court is in session, must see to it that the rules enforced are reasonable and necessary for that purpose. Under the undisputed evidence in this case, the rule against taking photographs in a court room while the court is in session has much support. Such a rule is in force in all of the Federal Courts of the United States, is clearly stated in the Canons of Judicial Ethics of the American Bar Association, and is recognized as necessary court room decorum by many state and local Bar Associations and by a great many individual judges of state courts. It is therefore impossible for this court to hold that the trial court, in promulgating the rule against photographs, which rule has received such wide acceptance in courts of law as being necessary to the impartial administration of justice, abused its discretion.

It is also claimed by defendants that the enforcement of such rule directly contravenes the constitutional right of freedom of the press. In considering this question, other constitutional guarantees, all of equal importance, must be taken into consideration. The Constitution of this State has vested its judicial power in the courts and charge the Judges of our court system with the obligation of administering justice without fear of favor, without respect to persons, and free from distractions or disturbances that are inimical to judicious conduct, looking only to the best interests of the litigants whose rights are the subject of a proceeding. The rules of court room conduct must be such

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as to remove it from the distractions and disturbances of the market place, and to maintain as nearly as possible an atmosphere conducive to profound and undisturbed deliberation. The right to trial in a court room, conducted and maintained in an atmosphere that bespeaks the profound and dignified responsibilities with which those who are conducting its proceedings—dealing with human rights as they must—are charged, is basic. A court in enforcing reasonable court room decorum, is preserving the constitutional and unalienable right of a litigant to a fair trial, and in preserving such right, the court does not interfere with the freedom of the press. A fearless and untrammelled judiciary is a necessary bulkwark in protecting liberty under law, and in preserving the rights of the people. There is no claim in this proceeding that all who wanted to attend this session of the court were not permitted to do so, or that the opportunity to report the proceeding was not afforded in keeping with court room decorum, such right being limited by requiring that the reporter act so that the proceeding of the court should not be disturbed.

In the case of *Bridges vs. California*, 314 U. S. 252, the Supreme Court of the United States held that both state and federal courts have the power to protect themselves from disturbances and disorders in the court room by the use of proceedings in contempt and that power cannot be challenged as conflicting with constitutionally secured guarantees of liberty. The constitutional right of freedom of the press was not violated by the order of the court in the proceeding which was the subject of this action and that claim is therefore overruled.

The evidence shows that the acts of defendants caused a disturbance and distracted the court in the proceeding in which the picture was taken. The defendants claim

that such disturbance was only for a short time, or "momentary" in duration, and so constitutes no justification for this proceeding. It is enough if defendants' acts in ignoring the court's order not to take pictures caused a distraction or had the potential possibility of doing so. The disturbance and distraction caused by picture taking cannot be repaired after the event. The flashlight inevitably startles those nearby when used without notice. Its use is not conducive to sustained mental effort. If a photographer can take one picture, he can take two or a dozen. If one photographer can take pictures, others should have equal rights. Nor is there any justification because of the character of the proceeding then in progress. It would constitute utter confusion to attempt a differentiation between the character of the proceedings in progress and none were contemplated by Judge Silbert's general order against picture taking while the court was in session. In fact this proceeding was specifically designated as included in the prohibition against picture taking during court proceedings under Canon No. 35.

The courts belong to the people. The people elect the judicial officers who are charged with the responsibility of presiding over sessions of the court in the administration of justice under the law. When the court is in session it is under the complete control of the judge whose directions, reasonably necessary to maintain order and prevent unnecessary disturbance and distraction, must be obeyed. Deliberate disobedience of such orders constitutes a contempt of court punishable under statutes of this state.

We find no reversible error in the proceedings of this case and the judgments are therefore affirmed. Exceptions noted. Order see journal.

HURD, P.J., KOVACHY, J., concur.

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OPINION OF THE SUPREME COURT OF OHIO.

Decided December 15, 1954.

This is an appeal from a judgment of the Court of Appeals which affirmed a judgment of the Common Pleas Court of Cuyahoga County, finding the defendants (appellants herein) guilty of contempt of court.

The defendants, three in number, are employees of The Cleveland Press. Sam Giaimo is a reporter, James Thomas is a photographer, and Louis Clifford is city editor.

An indictment against a former probate judge had been returned and he was scheduled to appear in the Common Pleas Court for arraignment on the morning of August 20, 1953. During the afternoon of August 19, in chambers, the judge before whom the accused was to appear informed Giaimo and other reporters that no pictures would be permitted in the courtroom during the arraignment or while the court was in session. Giaimo communicated this order to his superior, Clifford, the city editor, and was instructed by Clifford to take pictures and to take Thomas with him for that purpose. Clifford specified particularly that a photograph should be taken of the former probate judge as he stood before the bench in the courtroom while being arraigned.

The instructions were followed; pictures were taken and were published. Thereupon the judge who presided at the arraignment ordered the filing of written charges of contempt against the three defendants.

After an extended hearing, held before the judge who had presided at the arraignment, all were found guilty. Clifford was fined $500 and costs and ordered into custody of the sheriff for one hour. Giaimo was fined $100 and costs. Thomas was fined $100 and costs which were suspended.

Sixteen specifications of error were urged in the Court of Appeals, most of which need not be discussed. They included asserted violation of constitutional rights vouchsafed under Section 11 of Article I of the Constitution of Ohio and under the provisions of the First through the Fourteenth Amendments to the Constitution of the United States and also included error in the basing of the findings and judgment of guilty of contempt of court on the Canons of Judicial Ethics and in the failure to request the assignment of another judge to hear the charges.

After affirmance of the judgment by the Court of Appeals, the cause came before this court upon the allowance of a motion to certify the record.

OPINION. PER CURIAM.

The assignments of error in this court are substantially the same as in the Court of Appeals.

The case has been ably and exhaustively argued by counsel for both sides, both orally and by written briefs, and this court is appreciative of the assistance so rendered. The record has been studied. The conclusion of this court is in entire harmony with that reached by the Court of Appeals.

In the excellent opinion of the Court of Appeals (97 Ohio App., 1) all material questions raised by the defendants were considered and passed upon. We can do no better than to approve and adopt that opinion which says in part:

"It is first claimed by the defendants that the order was not properly issued, not having been journalized, the claim being made that a court speaks only through

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its journal. Such rule has application to the judgments or orders of the court when dealing with the trial of cases instituted and invoking the court's jurisdiction. A judge is at all times during the sessions of the court, empowered to maintain decorum and enforce reasonable rules to insure the orderly and judicious disposition of the court's business. An order made directly to one in attendance of a judicial proceeding that certain conduct would not be permitted while the court was in session need not be journalized to give such order legal effect, particularly with regard to those who are so directed and act with full knowledge and in defiance of the order.

"The judge in enforcing orders directing proper and necessary decorum in the courtroom, while the court is in session, must see to it that the rules enforced are reasonable and necessary for that purpose. Under the undisputed evidence in this case, the rule against taking photographs in a courtroom while the court is in session has much support. Such a rule is in force in all of the federal courts of the United States, is clearly stated in the Canons of Judicial Ethics of the American Bar Association, and is recognized as necessary courtroom decorum by many state and local bar associations and by a great many individual judges of state courts. It is therefore impossible for this court to hold that the trial court, in promulgating the rule against photographs, which rule has received such wide acceptance in courts of law as being necessary to the impartial administration of justice, abused its discretion.

"It is claimed also by defendants that the enforcement of such rule directly contravenes the constitutional right of freedom of the press. In considering this question, other constitutional guaranties, all of equal importance, must be taken into consideration. The Constitution of this state

has vested its judicial power in the courts and charged the judges of our court system with the obligation of administering justice without fear or favor, without respect to persons, and free from distractions or disturbances, that are inimical to judicious conduct, looking only to the best interests of the litigants whose rights are the subject of a proceeding. The rules of courtroom conduct must be such as to remove it from the distractions and disturbances of the market place and to maintain as nearly as possible an atmosphere conducive to profound and undisturbed deliberation. The right to trial in a courtroom conducted and maintained in an atmosphere that bespeaks the profound and dignified responsibilities with which those who are conducting its proceedings—dealing with human rights as they must—are charged, is basic. A court in enforcing reasonable courtroom decorum, is preserving the constitutional and unalienable right of a litigant to a fair trial, and in preserving such right, the court does not interfere with the freedom of the press. A fearless and untrammelled judiciary is a necessary bulwark in protecting liberty under law and in preserving the rights of the people. There is no claim in this proceeding that all who wanted to attend this session of the court were not permitted to do so, or that the opportunity to report the proceeding was not afforded in keeping with courtroom decorum, such right being limited by requiring that the reporter act so that the proceeding of the court should not be disturbed.

"In the case of *Bridges v. California,* 314 U. S., 252, 86 L. Ed., 192, 62 S. Ct., 190, 159 A. L. R., 1346, the Supreme Court of the United States held that both state and federal courts have the power to protect themselves from disturbances and disorders in the court-room by the use of

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proceedings in contempt and that power cannot be challenged as conflicting with constitutionally secured guaranties of liberty. The constitutional right of freedom of the press was not violated by the order of the court in the proceeding which was the subject of this action and that claim is therefore overruled.

"The evidence shows that the acts of defendants caused a disturbance and distracted the court in the proceeding in which the picture was taken. The defendants claim that such disturbance was only for a short time or 'momentary' in duration and so constituted no justification for this proceeding. It is enough if defendants' acts in ignoring the court's order not to take pictures caused a distraction or had the potential possibility of doing so. The disturbance and distraction caused by picture taking cannot be repaired after the event. The flashlight inevitably startles those nearby when used without notice. Its use is not conducive to sustained mental effort. If a photographer can take one picture, he can take two, or a dozen. If one photographer can take pictures, others should have equal rights. Nor is there any justification because of the character of the proceeding then in progress. It would constitute utter confusion to attempt a differentiation between the character of the proceedings in progress, and none were contemplated by Judge Silbert's general order against picture taking while the court was in session. In fact this proceeding was specifically designated as included in the prohibition against picture taking during court proceedings under Canon No. 35.

"The courts belong to the people. The people elect the judicial officers who are charged with the responsibility of presiding over sessions of the court in the administration of justice under the law. When the court is in session,

it is under the complete control of the judge whose directions, reasonably necessary to maintain order and prevent unnecessary disturbance and distraction, must be obeyed. Deliberate disobedience of such orders constitutes a contempt of court punishable under statutes of this state."

For the reasons so stated, the judgment of the Court of Appeals is affirmed.

Judgment affirmed.

WEYGANDT, C.J., MIDDLETON, TAFT, HART, ZIMMERMAN and STEWART, JJ., concur.

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APPENDIX B.

Ohio Revised Code, Section 2323.01:

"A judgment is the final determination of the rights of the parties in action. A direction of a court or judge, made or entered in writing and not included in a judgment, is an order."

Ohio Revised Code, Section 2323.22:

"All judgments and orders must be entered on the journal of the court, and specify clearly the relief granted or order made in the action. The entry must be written into the journal as soon as the entry is filed with the clerk or directed by the court and shall be journalized as of the date of the filing of said entry or of the written direction by the court."

Ohio Revised Code, Section 2705.01:

"A court, or judge at chambers, may summarily punish a person guilty of misbehavior in the presence of or so near the court or judge as to obstruct the administration of justice."

APPENDIX C.

JUDGMENT OF THE SUPREME COURT OF OHIO.

(December 15, 1954.)

APPEAL FROM THE COURT OF APPEALS OF CUYAHOGA COUNTY.

This cause came on to be heard upon the transcript of the Record of the Court of Appeals of Cuyahoga County, and was argued by counsel. On consideration whereof, it is ordered and adjudged by this court, that the judgment of the said Court of Appeals be, and the same is hereby, affirmed; and it appearing to the Court that there were reasonable grounds for this appeal it is ordered that no penalty be assessed herein.

It is further ordered that the appellee recover from the appellants its costs herein expended taxed at $_____.

ORDERED, That a special mandate be sent to the Court of Common Pleas of Cuyahoga County, to carry this Judgment into Execution.

ORDERED, That a copy of this entry be certified to the Clerk of the Court of Appeals of Cuyahoga County, "for entry."

(Application for Rehearing denied January 5, 1955.)

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